

# Gloucester City Council

<b>Meeting:</b>	<b>Licensing Sub-Committee</b>	<b>Date:</b>	<b>11 October 2016</b>
<b>Subject:</b>	<b>Application under Section 34 of the Licensing Act 2003 by Masood Ahmad Shamsi to Vary an existing Premises licence for Zam Zam Pizza And Fried Chicken, 144 Eastgate Street, Gloucester, GL1 1QU</b>		
<b>Report Of:</b>	<b>Gill Ragon – Head of Public Protection</b>		
<b>Wards Affected:</b>	<b>Westgate</b>		
<b>Contact Officer:</b>	<b>Richard Barnett – Licensing and Enforcement officer</b>		
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<b>Appendices:</b>	<b>1. Copy of application from Masood Shamsi</b>		
	<b>2. Location plan</b>		
	<b>3. Representation from Gloucestershire Constabulary</b>		
	<b>4. Gloucester City Council’s Licensing Policy Statement</b>		
	<b>5. Procedure for Licensing Sub Committee</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To consider an application by Masood Shamsi to vary an existing Premises Licence in respect of Zam Zam Pizza and Fried Chicken at 144 Eastgate Street, Gloucester, GL1 1QU. A copy of the application is attached in **Appendix 1**.

### 2.0 Recommendation

- 2.1 That members:

- (a) Consider the application, any relevant representations, the Licensing Objectives, the Council’s Statement of Licensing Policy and National Guidance (Section 182).
- (b) Determine the following steps it considers necessary for the promotion of the licensing objectives:
- To grant the application as applied for,
  - To accept the application and modify the conditions of the licence, by altering or omitting or adding to them,
  - To reject the whole or part of the application.

### 3.0 Background

- 3.1 On 22<sup>nd</sup> August 2016, the Licensing Team received an application from Masood Shamsi to vary an existing Premises Licence.
- 3.2 The application contained all the requisite documentation including the fee.
- 3.3 It can be confirmed that the application has been advertised (A4 notice displayed on site and a public notice placed in the local newspaper) and that the application has been served on all Responsible Authorities.
- 3.4 A location plan is attached in **Appendix 2**.
- 3.5 The applicant is applying to vary the following licensable activities:-

Licensable Activity	Current Licence	Variation application
Late Night Refreshment	Monday 23:00 to 00:15	Monday 23:00 to 01:15
	Tuesday 23:00 to 00:15	Tuesday 23:00 to 01:15
	Wednesday 23:00 to 00:15	Wednesday 23:00 to 03:15
	Thursday 23:00 to 00:15	Thursday 23:00 to 01:15
	Friday 23:00 to 03:15	Friday 23:00 to 05:00
	Saturday 23:00 to 03:15	Saturday 23:00 to 05:00
	Sunday 23:00 to 00:15	Sunday 23:00 to 01:15

- 3.6 The application also requests additional Non-Standard timings which are as follows:-
1. On the bank holidays, Christmas and New Year's Eve, operation hours to match the Friday and Saturday timings.
- 3.7 Members attention is drawn to pages 11 to 14 of the Council's Licensing Policy Statement which deals with the issue of cumulative impact and the Special Policy in respect of the Eastgate Street area. The Licensing Policy Statement can be seen in **Appendix 4**.

3.8 The effect of this Policy is to create a rebuttable presumption that application for new Premises Licenses, Club Premises Certificates or material variations will normally be refused if relevant representations are received. In essence the thrust of this Special policy is to ensure that premises licences are not issued to premises within the prescribed area which by their scope and nature could only serve to increase the problems already being experienced within that area. If, on the other hand, the applicant is able to demonstrate that the licence would not or is unlikely to add to the cumulative impact either by the nature of the premises or by the conditions placed upon the licence, the licence should be granted.

#### **4.0 Representations**

4.1 During the consultation period, the variation application has resulted in one representation from Gloucestershire Constabulary (Responsible Authority) on 15<sup>th</sup> September 2016. A copy of this representation can be seen attached as **Appendix 3**.

4.2 The representation relates to the Licensing Objective of The Prevention of Crime and Disorder and the Prevention of Public Nuisance.

4.3 The applicant and those who have made representations have been given Notice of Hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

#### **5.0 Financial Implications**

5.1 There are no direct financial implications associated with this report.

#### **6.0 Legal Implications**

6.1 The Licensing Sub-Committee is asked to determine this application with a view to promotion of the Licensing Objectives which are:

- The prevention of Crime and Disorder
- Public Safety
- The prevention of Public Nuisance
- The protection of Children from Harm

6.2 In making its decision, the Sub-Committee is also obliged to have regard to national guidance (Section 182) and the Council's own Licensing Policy. Member's attention is drawn to Sections 3, 4, 5 and 6 of Gloucester City Council's Licensing Policy statement which outline the authority's policy with regard to the licensing objectives and Section 8 that refers specifically to the licensing hours. This is attached in **Appendix 4**.

6.3 The Sub-Committee must also have regard to the representations made and the evidence it hears and also be satisfied that:-

- the application is properly made
- the application has given proper notice.
- The applicant has satisfied the advertising requirements.

- 6.4 The Sub-Committee has powers to decide on either of the options set in paragraph 2.1 (b) of this report
- 6.5 The Sub-Committee has powers to adjourn or carry forward the hearing to additional specified dates.
- 6.6 For the purposes of determining an application, a “relevant representation” means a representation which:
- (a) Is relevant to one or more of the licensing objectives.
  - (b) Is made by a responsible authority or other persons within the prescribed period.
  - (c) Has not been withdrawn
  - (d) If having been made by a person who is not a responsible authority, that they are not in the opinion of the Licensing Authority frivolous or vexatious.
- 6.7 In deciding what action, if any, it should take, the Sub-Committee Members must direct their minds to the causes and concerns which the relevant representations identify. Any action should generally be directed to these causes and should always be no more than is a necessary and proportionate response. In particular, any detrimental financial impact of the Sub-Committee decision must be necessary and proportionate.
- 6.8 The Sub - Committee is required to have regard to the most up to date version of the Home Secretary’s Guidance when making its decision. However the Guidance does not cover every possible situation, so long as Guidance has been followed properly and reason carefully understood, the Sub-Committee may depart from it. Full reasons must be given for any departure from the Home Secretary’s Guidance.
- 6.9 Following the case of Daniel Thwaites v Wirral Borough Magistrates Court 2008 The Sub-Committee needs to avoid:
- Speculating on what might happen in the absence of evidence that harm would or could happen.
  - Not paying attention to Government Guidance where failing to follow it requires good reasons to be given.
  - Modifying or imposing conditions that do not promote the licensing objectives.
- 6.10 Where the Sub-Committee determines an application it must notify the following of its decision, and the reasons for it :
- The applicant.
  - The ‘other person’ who made the relevant representations.
  - The ‘responsible authority’ who made the relevant representation.
- 6.11 The Sub-Committee has its own procedure for determining applications which are attached to the report as **Appendix 5**.

6.12 In considering the application, the Sub-Committee is solely performing the role of the Licensing Authority. The Sub-Committee sits in a quasi-judicial capacity and must act impartially. It must offer a fair and unbiased hearing of the application.

6.13 There is a right of appeal to the Magistrates Court by any interested party within 21 days of the decision being notified.

## **7.0 Risk & Opportunity Management Implications**

7.1 There is a right of appeal to the Magistrates Court for both the applicant and 'Other Persons'. Costs may be awarded against the Council on successful appeal if the Council has not acted reasonably.

## **8.0 People Impact Assessment (PIA):**

8.1 The Screening Stage considered risks to licence holders in the areas of gender, disability, age, ethnicity, religion, sexual orientation or community cohesion.

8.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

## **9.0 Other Corporate Implications**

### Community Safety

9.1 None at this stage

### Sustainability

9.2 None at this stage

### Staffing & Trade Union

9.3 None at this stage

**Background Papers** : Gloucester City Council Licensing Hearing Procedure

**Published Papers** : Licensing Act 2003  
Licensing Act 2003 (Hearings) Regulations 2005 Gloucester City Council Licensing Policy Statement Home Secretary (Home Office) Guidance issued under section 182 of the Licensing Act 2003 (June 2014) and Daniel Thwaites v Wirral Borough Magistrates Court (2008)